

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

FREDERICK BANKS, #05711-068

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:08cv276-DCB-MTP

SUSIE BRADSHAW, et al.

DEFENDANTS

ORDER

This matter is before the Court on the Plaintiff's motion [14] for reconsideration of the order [12] entered on February 25, 2009. The order [12] entered on February 25, 2009, found that the Plaintiff had brought four civil actions while incarcerated which were dismissed for failure to state a claim or as frivolous and, as a result of this Court's finding, the Plaintiff's privilege to proceed without prepayment of the filing fee was revoked pursuant to 28 U.S.C. § 1915(g) and the instant civil action was dismissed. The order [12] further held that if the Plaintiff paid the full filing fee of \$350.00 within 30 days of the entry of the order this civil action would be reopened. According to the docket entries, the Plaintiff has failed to pay the filing fee.

In the instant motion [14], the Plaintiff argues that the Prison Litigation Reform Act (PLRA), specifically 28 U.S.C. 1915(g), does not apply to him because he is a native American Lakota Sioux Indian. To support his argument, the Plaintiff cites the cases of *Daney v. United States*, 247 F. Supp. 533, 536 (D.C. Kan. 1965)(citations omitted); *Blackbird v. Commissioner*, 38 F.2d 976 (10th Cir. 1930); and *Choate v. Trapp*, 224 U.S. 665 (1912) . Having reviewed these cases, this Court is not persuaded by the case law relied upon by the Plaintiff. Moreover, this Court finds that the only exception to the Prison Litigation Reform Act is when the "prisoner is under imminent danger of serious physical injury." See 28 U.S.C. § 1915(g).

Under the allegations of the complaint [1] and the instant motion [14] , this Court has determined that the Plaintiff does not meet the exception to 28 U.S.C. § 1915(g). Therefore, based on the foregoing discussion, this Court holds that the Plaintiff's motion [14] is without merit and will be denied. Accordingly, it is,

ORDERED AND ADJUDGED that Plaintiff's motion [14] for reconsideration is **denied**.

SO ORDERED AND ADJUDGED this the 30th day of March, 2009.

s/ David Bramlette
UNITED STATES DISTRICT JUDGE